

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X
In re

PORTO RESOURCES, LLC,

Chapter 11
Case No. 14-41430 (ess)

Debtor.
-----X

**STIPULATION AND ORDER OF SETTLEMENT BETWEEN PORTO
RESOURCES, LLC AND SECURED CREDITOR SUNKYUNG, LLC**

WHEREAS, a hearing (the “Hearing”) was held before the Court on May 16, 2019 to consider, *inter alia*, the Amended Objection (ECF No. 245, the “Objection”) by Porto Resources, LLC (the “Debtor”) to Amended Proof of Claim dated May 1, 2018 (Claim No. 5-1, the “Sunkjung Claim”), filed by Sunkjung, LLC (the “Lender”), and on Lender’s Response to the Objection (ECF Nos. 248-253), and on the record of the Hearing,

NOW, THEREFORE, the Debtor and Lender hereby stipulate and agree as follows:

1. For purposes of this settlement and subject to the terms hereof, the parties agree that the Sunkjung Claim is fixed as an allowed first priority secured claim in the amount of One Million Three Hundred Fifty Thousand Dollars and 0/100 (\$1,350,000.00) (the “Settled Claim”).

2. Immediately upon entry of this Stipulation and Order, Robert Brill, Esq. as Receiver (“Receiver”) is authorized and directed to pay the following amounts from the funds being held by the Receiver:

a. \$150,000.00 to Lender, which shall be applied to the allowed claim of Lender in the Debtor’s bankruptcy case to reduce the amount of the Settled Claim or as otherwise provided for herein; and

b. \$30,000.00 to Joseph Porto, to reimburse Mr. Porto for funds advanced on

behalf of the Debtor during the pendency of the bankruptcy case and to reduce any allowed claim Mr. Porto may have in the Debtor's bankruptcy case.

3. The Debtor shall have until September 17, 2019 (the "September Deadline") within which to close on the sale of (a) that certain real property located at 517 West 158th Street, New York, New York 10032 (designated as Block 2117, Lot 48); and/or (b) that certain real property located at 560 West 173rd Street, New York, New York 10032 (designated as Block 2129, Lot 114) (each a "Property" and together, the "Properties") in an amount that fully satisfies the remaining unpaid amount of the Settled Claim (*i.e.*, \$1,200,000.00 after payment of \$150,000.00 by the Receiver to Lender).

4. If the Debtor fails to satisfy the remaining unpaid amount of the Settled Claim by the September Deadline (*i.e.*, September 17, 2019), but prior to the expiration of the September Deadline files a motion (the "Sale Motion") for approval of a valid, binding and enforceable arms' length contract entered into by the Debtor and a third party purchaser for the sale of either or both of the Properties in an amount that fully satisfies the remaining amount of the Settled Claim, then (a) the Receiver is authorized and directed to immediately pay to Lender an additional \$50,000.00 from funds being held by the Receiver, to be applied to reduce the amount of the Settled Claim or as otherwise provided for herein; and (b) the Debtor shall have until October 17, 2019 (the "October Deadline") to close on such contract and fully satisfy the then remaining balance of the Settled Claim (*i.e.*, \$1,150,000.00 after payment of \$150,000.00, plus \$50,000.00 by the Receiver to Lender) by the October Deadline.

5. If the Debtor is unable to pay the full amount of the Settled Claim by the September Deadline, or later October Deadline if a Sale Motion is timely filed by the Debtor, then (a) Sunkyoung shall keep and retain any amounts paid to it by the Receiver as

provided for herein (the “Receiver Payments”), and apply such payments to any allowed claim Sunkyoung may have in the Debtor’s bankruptcy case, and (b) the Debtor may re-file an objection to the Sunkyoung Claim and Sunkyoung shall be permitted to seek the full amount of the Sunkyoung Claim as filed with the Court, with the Receiver Payments being applied against any allowed Sunkyoung claim.

6. Subject to the terms hereof, unless and until the Sunkyoung Claim is satisfied in full, each of the parties reserves all of their respective rights, remedies and defenses.

7. All other pending matters and discovery matters and dates are hereby stayed and tolled pending further Order of the Court.

8. For the avoidance of doubt, if the Settled Claim is not paid in full either by the September Deadline, or October Deadline if applicable, as set forth herein, then the parties’ agreement in this Stipulation and Order to fix the Sunkyoung Claim as \$1,350,000.00 shall be null and void and have no bearing on what the Court may ultimately fix as the allowed amount of the Sunkyoung Claim.

9. This Stipulation and Order cannot be modified without a writing signed by both of the parties and “So Ordered” by the Court.

10. This Court shall retain jurisdiction with respect to this Stipulation and Order.

MICHAEL L. PREVITO, ESQ.

/s/ Michael L. Previto
6 Lyndon Lane
South Setauket, New York 11720
(631) 379-0837

Attorneys for Debtor Porto Resources, LLC

PORTO RESOURCES, LLC

/s/ Joseph Porto
Joseph Porto, Authorized Member

WESTERMAN BALL EDERER
MILLER ZUCKER & SHARFSTEIN, LLP

By: /s/ Thomas A. Draghi
Thomas A. Draghi, Esq.
1201 RXR Plaza
Uniondale, New York 11556
Tel.: (516) 622-9200

Attorneys for Sunkyoung, LLC

SUNKYUNG, LLC

/s/ Benjamin Shavolian
Benjamin Shavolian, Authorized Member